

1-294A098

17055-C  
17055-D

32

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE\*  
JAMES C. MARTIN JR.\*

\*ALSO ADMITTED IN NEW YORK  
\*ALSO ADMITTED IN MARYLAND

LAW OFFICES  
**ALVORD AND ALVORD**

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D.C.

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October 21, 1991

RECORDATION NO. ~~FILED 1425~~  
OCT 21 1991 - 1 00 PM

RECORDATION NO. 17055-D FILED 1425  
OCT 21 1991 - 1 00 PM  
INTERSTATE COMMERCE COMMISSION

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECORDATION NO. 17055-C FILED 1425

OCT 21 1991 - 1 00 PM

Dear Mr. Strickland:

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two copies each of 1) a Second Amendment to Revolving Credit Loan, Chattel Mortgage and Security Agreement dated as of October 18, 1991 and 2) a Supplement No. 2 to Schedule B Annexed to Revolving Credit Loan, Chattel Mortgage and Security Agreement dated October 18, 1991, secondary documents are defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The enclosed document relates to the Revolving Credit Loan, Chattel Mortgage and Security Agreement dated October 5, 1990, which was filed and recorded on October 9, 1990 at 10:50 a.m. and assigned Recordation Number 17055.

The names and addresses of the parties to the enclosed documents are:

Debtor: ACF Industries, Incorporated  
100 South Bedford Road  
Mt. Kisco, New York 10549

Secured Party: The Daiwa Bank, Ltd.  
200 North Broadway  
Suite 1625  
St. Louis, Missouri 63102

A description of the railroad equipment covered by the enclosed documents is set forth in Schedule A attached hereto and made a part hereof.

OCT 21 1 24 PM '91  
RECEIVED UNIT

*CT's Kappler*  
*Alvord*

Mr. Sidney L. Strickland, Jr.  
October 21, 1991  
Page 2

Also enclosed is a check in the amount of \$32 payable to the order of the Interstate Commerce Commission covering the required recordation fees.

Kindly return one stamped copy each of the two enclosed documents to the undersigned.

A short summary of the enclosed secondary documents to appear in the Commission's Recordation Register is:

Second Amendment to Revolving Credit Loan, Chattel Mortgage and Security Agreement dated as of October 18, 1991 and 2) Supplement No. 2 to Schedule B Annexed to Revolving Credit Loan, Chattel Mortgage and Security Agreement dated October 18, 1991 covering 235 covered hopper and tank railcars bearing ACFX reporting marks and road numbers.

  
Charles T. Kappler

CTK/bg  
Enclosures

Schedule A

<u>INITIALS &amp; RAIL CAR NOS.</u>	<u>NO. OF CARS</u>	<u>COST</u>	<u>AAR DESIG.</u>
ACFX45442-45456	15	\$1,098,185	C614
ACFX45428-45434	7	513,002	C614
ACFX28500-28516	17	1,452,621	C312
ACFX28517-28526	10		C712
ACFX94282-94286	5	264,015	T104
ACFX68400-68419	20	1,093,180	C214
ACFX45178-45184	7		
ACFX45188-45189	2	604,290	C614
ACFX45251	1	67,140	C614
ACFX45498-45517	20	1,469,372	C614
ACFX45438-45441	4	292,908	C614
ACFX45416-45423	8	808,256	C614
ACFX45424-45426	3		
ACFX68442-68464	23	1,386,228	C314
ACFX45518-45519	2	142,142	C614
ACFX94362-94391	30	2,203,631	T907
ACFX94430-94439	10	519,032	T105
ACFX94460-94469	10	651,071	T954
ACFX94418-94429	12	620,780	T108
ACFX73987-73997	11	777,127	T103
ACFX94480-94493	14	849,425	T105
ACFX73033	1	61,484	T106
ACFX73401	1	51,778	T106
ACFX94392-94393	2	104,392	T055

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/21/91

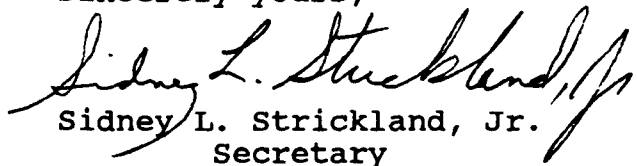
OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20005

Dear  
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/21/91 at 1:30pm, and assigned recordation number(s). 17055-C & 17055-D

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

OCT 21 1991 - 1 PM  
SECOND AMENDMENT TO REVOLVING CREDIT LOAN,  
CHattel MORTGAGE AND SECURITY AGREEMENT INTERSTATE COMMERCE COMMISSION

This "Amendment" is made and entered into as of the 18th day of October, 1991, by and between ACF Industries, Incorporated, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called "COMPANY"), and THE DAIWA BANK, LTD., a banking corporation organized and existing under the laws of Japan, acting through its branch office in Chicago, Illinois, (hereinafter called "BANK").

## W I T N E S S E T H:

## WHEREAS:

(1) BANK and COMPANY are parties to a certain Revolving Credit Loan, Chattel Mortgage and Security Agreement dated as of October 5, 1990, as amended by a First Amendment to Revolving Credit Loan, Chattel Mortgage and Security Agreement dated as of April 1, 1991 and a letter dated September 30, 1991 from the BANK to the COMPANY ( collectively the "Agreement");

(2) Pursuant to the terms of the Agreement, the COMPANY executed and delivered to BANK a certain First Amended Promissory Note dated April 1, 1991 in the principal amount of \$12,000,000.00, a copy of which is attached, marked Exhibit 1, and incorporated by reference (the "First Amended Note"); and

(3) BANK and COMPANY desire to amend the Agreement and the First Amended Note to provide for an extension of the term of the Agreement and the terms for Loans under the Agreement, upon and subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises, the covenants, promises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the parties hereto agree as follows:

1. Amendment of the First Amended Note. The First Amended Note hereby is amended upon the terms and in the form set forth in the form of Second Amended Promissory Note attached, marked Exhibit 2, and incorporated herein by reference (the "Second Amended Note").

For purposes of the Agreement, the terms and form of note for the Second Amended Note set forth in Exhibit 2, together with the terms hereinafter described, supersede the description of the terms of the First Amended Note set forth in the Agreement.

2. Amendment to Schedule B to Agreement. The Schedule B Supplement to the Agreement is hereby amended upon the terms and in the form set forth in the form of the Supplement to Schedule B attached, marked Exhibit 3, and incorporated herein by reference.

For purposes of the Agreement, the terms and form of the Schedule B Supplement set forth in Exhibit 3, together with the terms hereinafter described, supersede the description of the terms of the Schedule B set forth in the Agreement.

3. Amendments to the Agreement.

(a) The following shall be added to the Section 1 Definitions portion of the Agreement:

"Agreement" shall mean this Revolving Credit Loan, Chattel Mortgage and Security Agreement dated as of October 5, 1990, by and between the Borrower and the Bank, as amended by a First Amendment to Revolving Credit Loan, Chattel Mortgage and Security Agreement dated April 1, 1991, a letter Agreement dated September 30, 1991 and a Second Amendment to Revolving Credit Loan, Chattel Mortgage and Security Agreement dated as of October 18, 1991 all by and between the Bank and the Debtor.

(b) The following shall be added to the Section 1 Definitions portion of the Agreement:

"Maturity Date" shall mean September 30, 1992 or such later date as the Bank may advise the Debtor in writing.

(c) Section 2(a) of the Agreement is hereby amended to read as follows:

Subject to and upon the terms and conditions herein set forth, the Bank may make Loans to the Debtor on or before September 30, 1992 in an aggregate principal amount at any one time outstanding up to, but not exceeding, the Commitment of the Bank as then in effect. Subject to the terms of this Agreement, the Debtor may borrow, prepay (as provided in subsection (e)) and reborrow the amount of the Commitment. Each Loan shall be in immediately available funds in the amount of \$500,000 or in integral multiples thereof. The Debtor shall give written or telephonic notice to the Bank by 11:00 a.m. (Chicago time) on the date of the requested Loan. Each Loan shall be made at the offices of the Bank in Chicago, Illinois, or at such other time or

place as may be agreed upon by the Debtor and the Bank. In addition to the other provisions of this Agreement, the making of each Loan by the Bank shall in each instance be subject to

- (i) The Additional Collateral offered by the Debtor with respect to a Loan request shall consist of railroad rolling stock not more than one year old and the Loan request secured by such Additional Collateral does not exceed eighty percent (80%) of the Cost of the railroad rolling stock.
- (ii) The Additional Collateral offered by the Debtor for a Loan request shall be subject to a rail car lease which is in form satisfactory to the Bank and does not terminate and is not terminable less than one year from the date of the Loan and such lease, together with all other Debtor rail car leases pledged to the Bank does not cause more than 10% of Debtor rail car stock pledged to the Bank to be leased to any one entity unless such entity has a Standard & Poors or Moody Credit Rating of BBB or better or is acceptable to the Bank, but in no event can more than 20% of the rail car stock pledged to the Bank be leased to any one entity.

(d) Section 2(b) of the Agreement is hereby amended to read as follows:

- (a) The Loans shall be evidenced by a single promissory note to the order of the Bank substantially in the form of Exhibit 2 annexed to the Second Amendment to this Agreement dated October 18, 1991 (such note, as it may from time to time be modified, amended, supplemented or restated, is herein referred to as the "Note") which shall be payable to the order of the Bank in a principal amount equal to the Commitment, dated the date of the initial Loan evidenced thereby and duly executed by the Debtor with blanks appropriately filled in conformity herewith. The Note shall be due and payable on the Maturity Date, and shall be

subject to prepayment as provided in this Section 2. All Loans made by the Bank hereunder and all payments and prepayments made on account of the principal thereof shall be recorded by the Bank on the schedule attached to the Note; provided, however, that the Bank's failure to make such notation with respect to any Loan shall not limit or otherwise affect the obligation of the Debtor herein or under the Note with respect to any such Loan, and payments by the Debtor shall not be affected by failure to make a notation thereof on said schedule.

(e) Section 2(d) of the Agreement is hereby amended to read as follow:

- (d) The Debtor shall from time to time (until payment in full of the Note), upon the substantial destruction of any of the Equipment, at its option, either grant to the Bank a lien on other similar railroad rolling stock (by its execution and delivery of the documents and instruments referred to in Section 3(b)(i) hereof) which has a Cost at least equal to that of the Equipment substantially destroyed, or make a payment in respect of the Loans in an amount not less than 80% of the Cost of such destroyed Equipment.

(f) Section 3 (b)(i) of the Agreement is hereby amended to read as follows:

- (i) Amendments to each of the Security Documents, together with appropriate instruments to be recorded with the Interstate Commerce Commission and financing statements to be recorded pursuant to the Uniform Commercial Code including, without limitation, supplements to this Agreement in substantially the form annexed hereto as Schedule B, shall have been duly executed and delivered by the Debtor and the Bank to provide for the granting to the Bank of a first priority perfected security interest in the Additional Collateral with respect to such Loan, and copies of such necessary

instruments and documents, together with a copy of the invoices for the purchase by the Debtor of such Additional Collateral (if purchased), or other satisfactory evidence of its Cost (if built by the Debtor) shall have been received by the Bank together with adequate information regarding the rail car lease for such Additional Collateral); and

(g) Section 10(k) of the Agreement is hereby amended to read as follows:

- (k) The Equipment, or any unit thereof, shall be attached, distrained or otherwise levied upon, except as specifically permitted by this Agreement, and the Borrower shall fail to either (i) cause such attachment, distraint or levy to be vacated within 10 days; or (ii) within ten days, grant to the Bank a first lien on other similar railroad rolling stock (by its execution and delivery of the documents and instruments referred to in Section 3(b)(i) hereof) which has a Cost at least equal to that of the Equipment which was attached, distrained or otherwise levied upon; or (iii) within ten days, make a payment in respect of the Loans in an amount not less than 80% of the Cost of the Equipment which was attached, distrained or otherwise levied upon;

(h) Section 20(b) of the Agreement is hereby Amended to read as follows:

- (b) At any time and from time to time so long as an Event of Default is not continuing hereunder, the Bank shall take such actions as may be requested by the Debtor in order to release Collateral consisting of railroad rolling stock from the lien of this Agreement; provided, however, that in no event shall such Collateral be released from the lien hereunder if after such release the outstanding principal balance of the Loans would be greater than 80% of the Cost of Collateral consisting of railroad rolling stock subject to the lien of this Agreement.

(i) Section 21 of the Agreement is hereby amended to read as follows:

21. Eligibility and Replacement of Collateral.  
All Collateral shall at all times be satisfactory to the Bank in all respects. No

railroad rolling stock which is more than twelve months old (based upon date of manufacture) or otherwise does not comply with the provisions of Section 2(a) hereof shall be eligible for consideration as part of the Collateral hereunder. To the extent that any of the Collateral consisting of railroad rolling stock subsequently becomes ineligible or is deemed by the Bank to be unsatisfactory pursuant to this Section 21, such Collateral shall be immediately replaced with railroad rolling stock which meets the standard set forth herein.

4. Conditions To Execution Of This Amendment. Any provision contained herein or in the Agreement to the contrary notwithstanding, BANK shall have no obligation to execute this Amendment or accept the Second Amended Note until the following conditions are met:

(a) BANK shall have first received the Second Amended Note, in the form attached hereto as Exhibit 2, duly executed by a duly authorized officer of COMPANY;

(b) BANK shall have first received a certified copy of the resolutions of COMPANY, duly adopted at a meeting duly held: (i) authorizing the execution, delivery and performance of this Amendment in accordance with its terms, and (ii) authorizing the execution, delivery, and performance of the Second Amended Note, in the form attached hereto as Exhibit 2, in accordance with its terms;

(c) BANK shall have first received such other documents, certificates, and agreement as BANK reasonably may require;

(d) All representations and warranties made in the Agreement and herein shall be true and correct as of the date hereof, and the COMPANY shall have so certified to BANK;

(e) No action or omission exists as of the date hereof which constitutes, or which, with the passage of time, giving of notice or both, would constitute an Event of Default under the Agreement, and COMPANY shall have certified the same to BANK by a duly authorized officer;

(f) COMPANY shall be in compliance with all covenants of the Agreement, and COMPANY shall have certified the same to BANK by a duly authorized officer;

(g) All documents and filings necessary to maintain and perfect BANK's security interest in the Collateral as defined in the Agreement shall be in full force and effect, and all actions necessary to maintain and perfect the same shall have been taken;

(h) No material adverse change in the financial condition of COMPANY shall have occurred since October 5, 1990;

(i) No pending or threatened litigation or other proceeding or investigation shall exist which might adversely affect, in any material fashion, the prospects, operation or financial condition of COMPANY;

5. Representations and Warranties. COMPANY hereby represents and warrants to BANK that:

(a) All representations and warranties made by the COMPANY in the Agreement are true and correct as if they had been made on the date hereof.

(b) No Event of Default exists within the meaning of the Agreement, and no event exists which with the passage of time, the giving of notice, or both, would constitute an Event of Default within the meaning of the Agreement.

(c) The officers of COMPANY executing this Amendment and the Second Amended Note shall be fully authorized to do so, and all corporate actions necessary or proper to authorize the execution of this Amendment and the Second Amended Note, have been duly done, taken and performed. No consent, authorization or approval of any other person is necessary for the due execution and delivery by COMPANY of this Amendment and the Second Amended Note, and the performance by COMPANY of the terms hereof and thereof. This Amendment and the Second Amended Note are executed and delivered in accordance with any laws and regulations applicable hereto and thereto, and are the legal, valid and binding obligations of COMPANY, enforceable in accordance with their respective terms;

(d) The execution, delivery, and performance, in accordance with their respective terms, of this Amendment and the Second Amended Note will not violate any provision of COMPANY's Articles of Incorporation or By-laws, any law, or any applicable judgment or regulation of any court or of any public or governmental agency, officer, or authority, and will not conflict with, result in a breach of or default under, or result in the creation of any lien, charge or encumbrance upon any of the property or assets of

COMPANY (except for the security interests provided to the BANK) under, any indenture, mortgage, contract, deed of trust, or other agreement to which COMPANY is a party or by which COMPANY or any of its properties or assets is or may be bound;

(e) Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Bank, in connection with the preparation of this Amendment, the Second Amended Note and all other documents relating hereto and the consummation of this transaction, including recording costs and fees, shall be borne and paid for by the Debtor.

6. Entire Agreement. This Amendment, the Agreement and the Second Amended Note embody the entire agreement between the parties respecting the subject matter hereof and supersede all prior agreements, proposals, communications and understandings relating to such subject matter. The terms of the Amendment shall be considered a part of the Agreement as if fully set forth therein.

7. Miscellaneous. This Amendment shall be binding upon the COMPANY and its successors and the BANK and its successors and assigns. The section headings are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of this Amendment or the Agreement. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

8. No Other Amendments. In case of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment control. Except as expressly set forth in this Amendment, the terms of the Agreement remain unchanged and in full force and effect.

9. Governing Law. This Amendment shall be governed by the laws of the State of New York applicable to contracts made and to be performed in such State.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

ACF INDUSTRIES, INCORPORATED

By Vincent A. Brown  
Its Assistant Treasurer

THE DAIWA BANK, LTD.

By Ray R. Hing  
Its V.P. & Mgr.

By Diobmg  
Its V.P.

STATE OF Missouri )  
County of St Louis )

On this 18th day of OCTOBER, in the year 1991, before me, DEBRA L. KESSLER, a Notary Public in and for said state, personally appeared UMESH CHOKSI and UMESH CHOKSI, the Assistant Secretary, TREASURER, respectively of ACF INDUSTRIES, INC. a New Jersey corporation, known to me to be the persons who executed the within instrument, and did state that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and acknowledged to me that UMESH CHOKSI and UMESH CHOKSI executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the COUNTY OF ST LOUIS and State aforesaid, the day and year first above written.

Debra L. Kessler  
Notary Public

My Commission Expires:

Jan 27, 1995

DEBRA L. KESSLER  
NOTARY PUBLIC - STATE OF MISSOURI  
ST CHARLES COUNTY  
MY COMMISSION EXPIRES JAN 27, 1995

STATE OF Illinois )  
County of Cook )

On this 17th day of October, in the year 1991, before me, Catherine M. Rayburn, a Notary Public in and for said state, personally appeared H.W. Redding and Kirby Law of THE DAIWA BANK, LTD., known to me to be the persons who executed the within instrument, and did state that said instrument was signed and sealed in behalf of said bank by authority of its Board of Directors, and acknowledged to me that H.W. Redding and Kirby Law executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Cook and State aforesaid, the day and year first above written.

Catherine M. Rayburn  
Notary Public

My Commission Expires:

April 9, 1994

